

SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Approval of the Assignment and Acceptance of the Settlement Agreement and Release SWF Parcel Nos. 19-528-144X and 19-528-146S

REQUESTED ACTION: Approve Assignment and Release of Settlement Agreement

☐ Work Session (Report Only)

☒ Regular Meeting

DATE OF MEETING: 8/25/2009

☐ Special Meeting

CONTRACT: ☒ N/A

Vendor/Entity: Southwest Florida
Water Management
District and Fletcher
Marine

Effective Date: 8/11/2009

Managing Division / Dept:

Termination Date: 8/10/2014

Public Works

BUDGET IMPACT: N/A

☐ Annual

☐ Capital

☒ N/A

FUNDING SOURCE: N/A

EXPENDITURE ACCOUNT: N/A

HISTORY/FACTS/ISSUES:

As part of the acquisition of the Lake Panasoffkee Spoil Site, the Southwest Florida Water Management District (SWFWMD) desired to assign its liability and the County accepted those terms in order to work directly with Fletcher Marine, Inc. to coordinate its withdrawal of shell material and the County's desire to move forward with the use of the Spoil Site, specifically focusing on the trap & skeet range in the area of the shell removal.

In reviewing the agreement we ran into an impasse between the County Attorney and SWFWMD Attorney related to the indemnification clause therefore the Board will need to approve the contract as written in order to receive the deeds to the spoil site - noting the County Attorneys objection of that clause.



An Equal
Opportunity
Employer

Southwest Florida Water Management District

Bartow Service Office
170 Century Boulevard
Bartow, Florida 33830-7700
(863) 534-1448 or
1-800-492-7862 (FL only)

Lecanto Service Office
Suite 226
3600 West Sovereign Path
Lecanto, Florida 34461-8070
(352) 527-8131

2379 Broad Street, Brooksville, Florida 34604-6899
(352) 796-7211 or 1-800-423-1476 (FL only)
TDD only 1-800-231-6103 (FL only)
On the Internet at: WaterMatters.org

Sarasota Service Office
6750 Fruitville Road
Sarasota, Florida 34240-9711
(941) 377-3722 or
1-800-320-3503 (FL only)

Tampa Service Office
7601 Highway 301 North
Tampa, Florida 33637-6759
(813) 985-7481 or
1-800-836-0797 (FL only)

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Polk
Douglas B. Sharp
Sumter
Judith C. Whitehead
Hernando

David L. Moore
Executive Director
William S. Bilenky
General Counsel

July 23, 2009

Mr. Bradley Arnold
County Administrator, Sumter County
910 North Main Street, Room 201
Bushnell, Florida 33513

Subject: Assignment and Acceptance of Settlement Agreement and Release
SWF Parcel Nos. 19-528-144X and 19-528-146S

Dear Mr. Arnold:

As you are aware, the Southwest Florida Water Management District will assign to Sumter County its rights and responsibilities with respect to its Settlement Agreement and Release with Fletcher Marine, Inc. (FMI). Enclosed are three original copies of the Assignment and Acceptance of Settlement Agreement and Release. Please arrange for the appropriate representatives of Sumter County and FMI to execute all three originals and return to me. I will then have the District's Executive Director sign the documents and I will return two originals to you for County and FMI records.

If you have any questions or would like to discuss the matter in further detail, please contact me at 352-796-7211, extension 4581 or via email at chuck.lane@watermatters.org.

Sincerely,

Chuck Lane
Senior Land Use Specialist
Land Resources Department

CL:sp
Attachments (3)

cc: Eric Sutton
Will Miller

Copy To:

Comms

Co Atty

Co Fin

Other

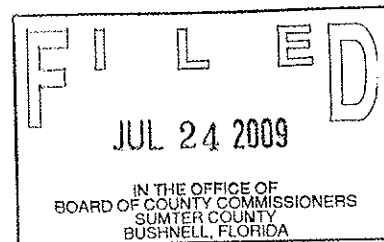
Pub Wks Div

Bldg & Dev Div

Admin Div

Corn Svcs Div

Handwritten initials and date: 7-25-09



**ASSIGNMENT AND ACCEPTANCE OF
SETTLEMENT AGREEMENT AND RELEASE**

KNOW THAT assignment is made this ____ day of _____ 2009,
by the Southwest Florida Water Management District, a public corporation whose
address is 2379 Broad Street, Brooksville, Florida 34604, as Assignor, to Sumter
County, a political subdivision of the State of Florida, whose mailing address is
910 North Main Street, Bushnell, Florida 33513, as Assignee.

For value received, Assignor assigns and transfers to Assignee all its
rights, duties, and obligations in and to that certain Settlement Agreement and
Release (Agreement) dated September 30, 2008, on property known as SWF
Parcel No. 19-528-144X located in Sumter County, Florida, subject to all the
conditions and terms contained in the Agreement. This assignment shall be
effective from the date first above written, until the expiration or termination of the
Agreement. A copy of the Agreement is attached hereto and made a part hereof
by reference.

Assignor covenants that it is the lawful party to the Agreement assigned
hereunder and that it has performed all duties and obligations required under the
terms and conditions of the Agreement.

Assignee agrees to assume and perform all duties and obligations
required by the terms of the Agreement. Additionally, Assignee agrees to be
jointly and severally liable with Fletcher Marine, Inc., the other party to the
Agreement, in the event of any breach of the terms and conditions of the
Agreement, in accordance with Paragraph 8 of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this
Assignment and Acceptance of Settlement Agreement and Release the day and
year first above written.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: _____
David L. Moore, Executive Director

Date: _____

Witness: _____

(Print Name of Witness)

SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date _____

Reviewed as to form and legal sufficiency

County Attorney's Office/Date

CONSENT TO ASSIGNMENT AND ACCEPTANCE OF LEASE

The undersigned, Fletcher Marine, Inc., being a party to that certain Settlement Agreement and Release dated September 30, 2008, between Assignor, Southwest Florida Water Management District, and Fletcher Marine, Inc., does hereby consent and agree to the foregoing Assignment and Acceptance of Settlement Agreement and Release from the Southwest Florida Water Management District to Sumter County, and does hereby release the Southwest Florida Water Management District from all duties and responsibilities under the Agreement.

IN WITNESS WHEREOF, the undersigned has signed this instrument
this ____ day of _____, 2009.

FLETCHER MARINE, INC.

By: _____

Witness: _____

(Print Name)

(Print Name of Witness)

STATE OF FLORIDA
COUNTY OF _____

APPROVED BY:	INITIALS	DATE
ATTORNEY	<i>WJ</i>	6/25/09
MANAGER	<i>WJ</i>	6/29/09
DIRECTOR	<i>LH</i>	7/1/09
DEPUTY EXEC DIR	<i>Q</i>	7/20/09

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered into by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida ("DISTRICT"), and FLETCHER MARINE, INC., a Florida corporation ("FLETCHER").

WITNESSETH:

WHEREAS, the DISTRICT entered into an agreement with Subaqueous Services, LLC ("Subaqueous") for the Lake Panasoffkee Restoration Project ("Project"), DISTRICT Agreement No. 03CONC00031, hereinafter referred to as the "Restoration Agreement"; and

WHEREAS, Subaqueous subcontracted with FLETCHER for the performance of dredging work required under the Restoration Agreement; and

WHEREAS, FLETCHER claims that it is entitled to a fuel and energy cost adjustment as a result of unexpected fuel and energy cost increases from May 2006 through the completion of the Project which is expected to be November 2008; and

WHEREAS, the DISTRICT maintains that fuel and energy cost adjustments are not authorized under the Restoration Agreement; and

WHEREAS, the parties desire to settle this dispute under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. SETTLEMENT OF DISPUTES. In order to reach resolution of any and all present and future claims FLETCHER may have against the DISTRICT arising from or related to the performance of the Project, the DISTRICT agrees to provide FLETCHER with shell material located on approximately 40 acres of land owned by the DISTRICT ("Property") for the purpose of selling said shell material. The Property is more specifically described in Exhibit "A", attached hereto and incorporated herein by reference. FLETCHER'S access to the Property and the sale of the shell material will be in accordance with and subject to the terms and conditions set forth in the subparagraphs below.
 - 1.1 The DISTRICT agrees to allow FLETCHER to sell shell material located on the Property as compensation for documented inflated fuel and energy costs as set forth at Subparagraph 1.2 of this Agreement. The DISTRICT will conduct an initial baseline topographic survey of the shell area and will perform subsequent topographic surveys to quantify the volume of shell removed by FLETCHER. The DISTRICT will retain ownership of the shell material until such time that FLETCHER locates a buyer and hauls the shell off-site.

- 1.2 FLETCHER will provide to the DISTRICT a final fuel and energy adjustment amount for all inflated fuel and energy costs incurred from May 2006 through the completion of the Project along with supporting documentation within sixty (60) days of completion of the Project. The DISTRICT'S Operations Department Director will approve the final amount ("Approved Amount") within thirty (30) days of receipt of the supporting documentation, which approval will not be unreasonably withheld. FLETCHER asserts that inflated diesel fuel costs incurred between May 2006 and September 16, 2008, totals \$1,086,989; however, FLETCHER has not yet provided documentation supporting such amount to the DISTRICT. For purposes of this subparagraph, supporting documentation will consist of fuel delivery tickets from diesel fuel providers and copies of invoices from Sumter Electric Cooperative, Inc., showing cost break downs for each monthly invoice.
- 1.3 FLETCHER will credit the DISTRICT \$2.60 per cubic yard (in-place volume) of material sold. For example, if the Approved Amount is \$1,200,000, FLETCHER will be allowed to remove and sell 461,538 cubic yards ($\$1,200,000 / \2.60 per cubic yard) of shell material as compensation. The exact yardage FLETCHER will be allowed to sell will be based on the actual costs incurred by FLETCHER through completion of the Project.
- 1.4 FLETCHER will be allowed to sell shell material for the term of this Agreement as provided at Paragraph 5 or until FLETCHER is fully compensated for the Approved Amount, whichever is earlier.
- 1.5 Commencing upon the DISTRICT'S approval of the final fuel and energy adjustment amount as set forth at Subparagraph 1.2, FLETCHER may enter upon the Property for the purpose of excavating shell, loading shell onto trucks and removing shell from the Property. FLETCHER is allowed to place vehicles, a construction trailer and equipment necessary for the shell operation on the Property with prior written approval from the DISTRICT'S Operations Department Director. FLETCHER is not authorized to set up any type of processing facilities on the Property; shell is to be loaded and hauled off-site as-is. FLETCHER is responsible for obtaining any property rights from adjacent land owners that may be necessary to access the Property.
- 1.6 If there is not adequate shell located on the Property to compensate FLETCHER as provided in this Agreement, the DISTRICT will authorize FLETCHER to enter upon adjacent land owned by the DISTRICT to access additional shell material. In this event, Exhibit "A" will be revised to replace the Property with this new area and the revised Exhibit "A" will be incorporated herein by reference. Upon receipt of the revised Exhibit "A" and written approval from the DISTRICT'S Operations Department Director, FLETCHER will relocate any vehicles, construction trailers, and other equipment to the new designated area.
- 1.7 Upon termination of this Agreement, FLETCHER will promptly remove all vehicles, construction trailers and equipment from the DISTRICT'S property.

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- 1.8 FLETCHER will provide quarterly reports to the DISTRICT documenting the tons and volume of material hauled off-site. Documentation will consist of a summary spreadsheet and copies of delivery tickets.
 - 1.9 Notwithstanding the above, the DISTRICT has the option at any time during the term of this Agreement to pay FLETCHER an amount that equals the unreimbursed portion of the Approved Amount instead of providing FLETCHER with access to shell material as set forth in this Agreement.
 - 1.10 The DISTRICT'S obligations as set forth in Paragraph 1 of this Agreement, including all subparagraphs, will take effect only after FLETCHER provides the releases described at Paragraph 2 of this Agreement.
- 2. RELEASE. In consideration of the execution by the DISTRICT of this Agreement and the compromise contained herein, FLETCHER, by execution hereof, waives, releases and relinquishes any and all claims, demands, causes of action, and liability, including attorneys' fees and costs, that it has or may have in the future, against the DISTRICT and Subaqueous, its employees, officers arising out of or relating to the work performed under Restoration Agreement.
 - 3. NONADMISSION. By entering into this Agreement, the DISTRICT does not admit any liability to FLETCHER, Subaqueous or any other party, for fuel and energy cost adjustments arising from or related to the Project.
 - 4. ASSUMPTION OF RISK AND INDEMNIFICATION. FLETCHER will assume all risk involved in entering upon and utilizing the DISTRICT'S property as authorized under this Agreement and agrees to indemnify and hold harmless the DISTRICT and all DISTRICT agents, employees and officers from and against all liabilities, claims, damages, expenses or actions, either at law or in equity, including attorneys' fees and costs and attorneys' fees and costs on appeal, caused or incurred, in whole or in part, as a result of any act or omission by FLETCHER, its agents, employees, subcontractors, assigns, heirs or anyone for whose acts or omissions any of these persons or entities may be liable during FLETCHER'S performance under this Agreement. This paragraph will survive the termination or expiration of this Agreement.
 - 5. CONTRACT PERIOD. This Agreement will be effective upon execution by all parties, and will remain in effect for five (5) years from the date of demobilization of the Project, unless terminated, pursuant to Paragraphs 1.4 and 1.9 of this Agreement, or as amended in writing by the parties. Notwithstanding the above, the effectiveness of this Agreement is contingent upon and subject to review and approval by the DISTRICT Governing Board at its meeting on September 30, 2008. In the event the DISTRICT Governing Board does not approve this Agreement, this Agreement shall be null, void and of no legal effect. After this Agreement has been executed by FLETCHER and the Executive Director of the DISTRICT, FLETCHER may not withdraw approval or terminate this Agreement under any circumstances unless the DISTRICT Governing Board fails to approve this Agreement.

6. LAW COMPLIANCE. FLETCHER agrees that the activities authorized under this Agreement will be performed in a good, safe, workmanlike manner and in accordance with all applicable federal, state and local laws, rules, regulations, guidelines and permits.
7. INSURANCE. FLETCHER must maintain during the entire term of this Agreement, insurance in the following kinds and amounts or limits with a company or companies authorized to do business in the State of Florida and will not commence work under this Agreement until the DISTRICT has received an acceptable certificate of insurance showing evidence of such coverage. Certificates of insurance must reference this Agreement and the DISTRICT'S Project Manager.
- 7.1 Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office without restrictive endorsements, or equivalent, with the following minimum limits and coverage:
- | | |
|------------------------|-------------|
| Per Occurrence..... | \$500,000 |
| General Aggregate..... | \$1,000,000 |
- 7.2 Vehicle liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:
- | | |
|--|-----------|
| Bodily Injury per Person | \$100,000 |
| Bodily Injury Liability per Occurrence | \$300,000 |
| Property Damage Liability | \$100,000 |
| or | |
| Combined Single Limit | \$500,000 |
- 7.3 The DISTRICT and its employees, agents, and officers must be named as additional insureds on the general liability policy to the extent of the DISTRICT'S interests arising from this Agreement.
- 7.4 FLETCHER must carry workers' compensation insurance in accordance with Chapter 440, F.S. If FLETCHER does not carry workers' compensation coverage, FLETCHER must submit to the DISTRICT both an affidavit stating that the FLETCHER meets the requirements of an independent contractor as stated in Chapter 440, F.S. and a certificate of exemption from workers' compensation coverage.
- 7.5 Certificates of insurance must provide for mandatory thirty (30) days prior written notice to the DISTRICT of any change or cancellation of any of the required insurance coverage.
- 7.6 FLETCHER must obtain certificates of insurance from any subcontractor otherwise the FLETCHER must provide evidence satisfactory to the DISTRICT that coverage is afforded to the subcontractor by the FLETCHER insurance policies.
8. REMEDIES. Either party's failure to timely comply with any obligation in this Agreement will be deemed a breach of this Agreement and the expenses and costs incurred by the

- non-breaching party, including attorneys' fees and costs and attorneys' fees and costs on appeal, due to said breach will be borne by the breaching party. Additionally, the parties will not be limited by the above but may avail themselves of any and all remedies under Florida law for any breach of this Agreement. The waiver by any party to this Agreement of the breach of any provision of this Agreement will not be deemed a continuing waiver or a waiver of any subsequent breach.
9. NOTICES. For purposes of this Agreement, all notification shall be provided as follows:
- | | |
|--|--|
| Don Fletcher, President
Fletcher Marine, Inc.
1040 Island Avenue
Tarpon Springs, FL 34689 | Mike Holtkamp, Dir., Operations Department
Southwest Florida Water Management District
2379 Broad Street
Brooksville, FL 34604-6899 |
|--|--|
10. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.
11. AUTHORITY OF PARTIES. Subject to approval by the DISTRICT Governing Board as provided at Paragraph 5 of this Agreement, the parties hereby represent and warrant that each has full power and authority to enter into this Agreement; that all consents and authorizations required in order to enter into and perform this Agreement have been obtained and are in full force and effect; and the parties hereby agree to indemnify and hold the other party, and its officers, directors, agents, and assigns, harmless from and against any and all loss or liability (including, without limitation, any and all attorney's fees and costs throughout all trial and appellate levels) the indemnified party may incur or become liable for as a result of or in connection with any inaccuracy in any of said representations or warranties and any claim or demand accruing as a result thereof.
12. SUCCESSORS AND ASSIGNS. This Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives and successors. No party may assign its interest under this Agreement, without the prior written consent of the other party.
13. VENUE AND APPLICABLE LAW. This Agreement shall be governed by, construed, and enforced under the laws of the State of Florida and venue will lie in the County of Hernando.
14. DRAFTING. The parties agree that this Agreement will be construed without regard to the drafter of the same and will be construed as though each party to this Agreement participated equally in the preparation and drafting of this Agreement.
15. VOLUNTARY EXECUTION. The parties acknowledge that each has read and understands this Agreement and that each is signing this Agreement voluntarily, without coercion, and based upon his or its own judgment, and not in reliance upon any representations or promises made by the other party, other than those contained within this Agreement.

16. HEADINGS. The captions appearing at the commencement of the paragraphs hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the paragraph at the head of which it appears, the paragraph and not such caption will control and govern in the construction of this Agreement.

In WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Release on the day and year set forth next to their signatures below.

FLETCHER MARINE, INC.

John M. Behn 9/25/08
Witness Date

By: Don Fletcher 9/25/08
Don Fletcher, President Date
Authorized Agent for Company

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

Dianne M. Cross 9-30-08
Witness Date

By: David L. Moore 9-30-08
David L. Moore Date
Executive Director

Approved by the Governing Board of the Southwest Florida Water Management District this
30th day of SEPTEMBER 2008, in HERNANDO,
County, Florida.

By: Neil Combe
Neil Combe, Chair

Attest: Jennifer E. Closshey
Jennifer E. Closshey, Secretary
(Seal)

Filed this 1ST day of
OCTOBER
10 2008
Deputy Agency Clerk

Approved as to Legal Form and Content
MB McNeil
Attorney

Exhibit "A"

Legal Description 19-528-144X

The South 1000.00 feet of the North 1200.00 feet of the East 1625.00 feet of the West 1950.00 feet of the Southwest 1/4 of Section 16, Township 20 Soth, Range 22 East lying in Sumter County, Florida.

Containing 37.3 acres

Survey Section 09-25-08

Remainder of this page intentionally left blank.

